

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute —Industrial Dispute between the Workmen and the Management of Hindustan Aeronautics Ltd., H. A. L., P. O. Bangalore-17.

Interim Award of the Labour Court, Bangalore—Published.

Read the following papers :

(1) Letter No. 1911/70-71, dated 8th December 1970 from Sri A. N. Sundara Murthy, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT,
BANGALORE.

Dated this 8th day of December 1970.

Present

Sri A. N. Sundara Murthy B.A., B.L.

Presiding Officer.

Reference No. 88 of 1969.

Workmen represented by the Secretary, Hindustan Aeronautics Ltd., Employees and Drivers Union, No. 19, Slaughter House 'F' Street, Thimmaiah Road, Bangalore-2.... *I Party*

Vs.

The Management of Hindustan Aeronautics Ltd., H.A.L. P.O., Bangalore-17. *II Party*

Reference Government Order No. FGL 214 LLD 69, Dated 2nd August 1969.

INTERIM AWARD.

1 The present application is filed under Section 10 (4) of the Industrial Disputes Act on behalf of the first party workmen praying that for the reasons sworn to in the accompanying affidavit

the Court may grant interim relief till the decision of the Court in respect of the matter referred for adjudication in the interests of justice. In the accompanying affidavit filed by the first party workman he has stated that he was wrongfully dismissed from service with effect from 26th July 1967. He is a family man having three children. His sister and mother are depending upon him. Before his dismissal he was getting a monthly pay of Rs. 170. He is in great financial difficulties. The Court has power to grant interim relief of ordering payment of substantial wages in the nature of subsistence allowance under sub-section (4) of Section 10 of the Industrial Disputes Act as laid down by the Supreme Court in *Hotel Imperial, New Delhi Vs. Hotel Workers Union* reported in 1959 II LLJ 544.

2 On behalf of the Second Party, objection statement is filed as follows: The application is misconceived, not maintainable in law and is liable to be rejected. Section 10 (4) of the Industrial Disputes Act does not provide for grant of interim relief pending adjudication upon the dispute. The first party workman was lawfully dismissed after he was found guilty of the misconduct. The Industrial Tribunal before whom the Second Party filed an application for approval of the dismissal has upheld the dismissal as valid in law. The decision in 1959 II LLJ 544 is not applicable to the facts and circumstances of this case. The application for interim relief is highly belated and no averments are made in the affidavit in support of the application explaining the reason for delay in filing the application. On this ground alone the application is liable to be dismissed. The other averments made in the affidavit of the first party are denied. It is stated that there is no obligation in law for the Second Party to pay any wages or other money to the dismissed employee. To direct interim payment would amount to granting a relief even before adjudication of the rights of the parties. Hence it is prayed that the application may be dismissed.

3 The points of dispute referred for adjudication to this court in this reference are as follows:—

“Is the Management of Hindustan Aeronautics Ltd., H.A.L.P.O., Bangalore-17 justified in dismissing Shri Bhāshkhan, Driver, Ex B-No. 710/463/49923 from service of the Company? If not, to what relief is he entitled?”

4 On behalf of the first party workman claim statement is filed stating that the dismissal order is not justified. On behalf of the second party rejoinder is filed justifying the dismissal order.

5. Now the point for consideration is whether interim relief may be granted to the first party workman as prayed for in the application. On behalf of the first party reliance is placed on the decision of the Supreme Court reported in 1959 II LLJ 544 and on behalf of the second party the decision in 1960 II LLJ 712 is cited. According to the learned counsel for the second party the decision in 1959 II LLJ 544 is not applicable to the facts of this case. In the above said decision the Industrial Tribunal granted relief pending disposal of adjudication proceedings in an application under Section 33A. This order was confirmed by the Labour Appellate Tribunal. In the above said decision the Supreme Court has held that Section 33 of the said Act has introduced a fundamental change in the law of master and servant in so far as the cases which fall within the Act are concerned. In the said decision the Supreme Court has held as follows :—

“It would be reasonable for an industrial tribunal where it is dealing with a case to which S 33 applies, to imply a term in the contract giving power to the master to suspend a servant when the master has come to the conclusion after necessary enquiry that the servant has committed misconduct and ought to be dismissed, but cannot do so because of S '33. In the peculiar circumstances which have arisen on account of enactment of S. 33 it is but fair and just that industrial tribunals should imply such a term in the contract of employment.”

Relying upon the above said observations of the Supreme Court it is contended on behalf of the second party that the principles laid down in the above said decision are applicable only where an application filed under Section 33 is pending for adjudication. I do not think that this contention can be upheld. In view of the principles laid down by the Supreme Court in the very same decision which are as under.—

“There can be no doubt that, if for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with

respect to the same matter would be a matter incidental thereto under S 10 (4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms."

From the principles laid down in the above said decision it is clear that in a reference where the question of reinstatement is referred for adjudication the question of granting interim relief till the decision of the tribunal would be incidental thereto under S. 10 (4) and need not be specifically referred to in terms to the tribunal. Thus it will be seen that this court will be within its jurisdiction if it finds that interim relief should be granted to the first party workman in the interests of justice.

6. In 1960 ILJ 712 the Supreme Court has laid down relying on 1959 ILJ 544 that the interim relief should not be the whole relief that the workman would get if he succeeds finally. In the said case the Tribunal had ordered the Management to permit the workman to report for duty on a particular date failing which full back wages should be paid. In respect of such an order the Supreme Court has observed as follows.—

"We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under S. 33A. As was pointed out in Hotel Imperial case ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. The order therefore of the tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside.

In the present case the interim relief sought for is not to direct the second party to take back the first party workman on duty and pay him full wages. Hence the decision cited above is not helpful to the second party.

7. The other contention urged on behalf of the second party is that the second party held an enquiry and thereafter accepting the enquiry report dismissed the first party workman for

misconduct and that the Additional Industrial Tribunal has also upheld the dismissal as valid in law. In view of this fact it is contended that interim relief should not be granted.

8. Merely because the dismissal order is approved in an application filed under Section 33 (2) (b) of the Industrial Disputes Act it would not mean that the reference itself is not maintainable even in such a case, a reference is maintainable. When a reference is maintainable and if the interim relief claimed by the first party workman is incidental there to it would not be a bar.

9. Now the next point for consideration is as to what is the percentage of interim relief that should be granted to the first party workman. The first party workman has stated in his affidavit that he has to maintain himself, his three children, his sister and mother and he is in great financial difficulty. There is also nothing to show that the first party workman is employed elsewhere and is earning. In view of these circumstances it appears to me that it would meet with ends of justice if the first party workman is ordered to be paid 50% of his wages from this date till the disposal of the reference.

10. In the result I make an interim award directing the Second Party to pay 50% of his wages to the first party workman as interim relief from this day i.e., 8th December 1970 till the disposal of the Reference.

A. N. SUNDARA MURTHY,
Presiding Officer,
Labour Court, Bangalore.